RESPONDENT'S APPENDIX

A

Errors assigned by petitioners in their petition for certiorari to the Supreme Court of Tennessee.

To the Supreme Court of the State of Tennessee

Norma Frances Raoul Clark and Ann Elizabeth Raoul, Petitioners, vs. American National Bank and Trust Company of Chattanooga, Respondent.	In the Court of Appeals on Appeal From the Chancery Court of Hamilton County (Docket No. 38441)

PETITIONERS' ASSIGNMENTS OF ERROR

I

The Court of Appeals erred in sustaining the defense of the six year statute of limitations. This was error for the reasons assigned in Section VII, pages 23-25, of the Petition for a Writ of Certiorari, immediately above.

Should it become material, depending on the resolution of the above assignment of error, petitioners assign the following additional error:

II

The Court of Appeals erred in finding that the Bank had not been disloyal to the trust. This was error for the reasons set forth in Section VIII, page 25, of the Petition for a Writ of Certiorari, immediately above.

B

Petitioners' specifications of errors as to the statute of limitations advanced in their petition for certiorari to the Supreme Court of Tennessee.

VII

Error as to Statute of Limitations

Petitioners aver that the Court of Appeals erred in sustaining the defense of the six year statute of limitations because:

A. The statute of limitations, in any event, did not begin to run until petitioners discovered, or reasonably should have discovered, that they had a right of action.

B. The technical termination of Trusts 927 and 929 in 1956 did not set the six year statute of limitations in motion since the Bank continued thereafter to date as express trustee for petitioners of the same trust corpus under Trust 1661 without any acts indicative of termination, as compared to extension of the earlier trusts.

C. The Bank as trustee was under an obligation to, but did not make full disclosure to the beneficiaries. Accordingly, a fraudulent concealment resulted which tolled the running of the statute of limitations.

D. Regardless of whether or not the statute of limitations bars suit against the Bank as trustee of the three original trusts in question, the Bank, as trustee of Trust 1661 held the right of action against itself for its 1944 breach and not its beneficiaries. As trustee under Trust 1661, an express trust continuing to the present time, it is liable for failing to make this claim and the statute of limitations has yet to begin to run on this liability.

E. The statute of limitations is not available as a defense to the Bank since it failed to plead the applicable statute.

F. The theory of defense that Trusts 927 and 929 terminated in 1956, at which time the six year statute of limitations began to run, was not a theory of the Bank at the trial.

G. Had the Bank requested leave to amend its pleadings at the time it first raised the six year statute such amendment could not be allowed as it came too late.

H. Petitioners were not acting on one theory in the trial court and switching to another on appeal, as the Court of Appeals found, when petitioners raised the failure of the Bank to plead the six year statute before the Court of Appeals.

C

Excerpt from page 2 of petition to rehear filed by petitioners in the Supreme Court of Tennessee raising the Fourteenth Amendment question for the first time.

2. Unless it was the intention of the Court to overrule its recent landmark decision in **Teeters v. Currey,** 518 S.W.2d 512 (December 9, 1974) adopting the discovery rule in Tennessee as to the inception of the running of the applicable statute of limitations, then the failure to apply such rule in favor of petitioners in the subject case constitutes a denial of their fundamental rights:

(a) Not to be deprived of their property, but by the law of the land under Article I, Section 8 of the Constitution of the State of Tennessee;

(b) To a remedy by due course of law under Article I, Section 17 of the Constitution of the State of Tennessee; and

(c) To due process of law and the equal protection of the laws under the Fourteenth Amendment of the United States Constitution.

Petitioners rely upon the brief attached hereto for the details in support of this petition.